

CITY OF LINCOLN/LANCASTER COUNTY

**CONTRACT AWARD NOTIFICATION**

**SPECIFICATION NO.02-122**

**ANNUAL REQUIREMENTS FOR**

**PHONE SERVICES FOR COUNTY CORRECTIONS**

**AND RELATED PROGRAMS**

**DATE:** May 19, 2003

**CONTRACT PERIOD:** Jan.1, 2003 thru Dec. 31, 2005

**CONTRACTOR:** Evercom Systems, Inc.  
78201 Tristar Drive  
Irving, TX 75063

**PURCHASING DIVISION**  
**K-STREET COMPLEX**  
**440 SOUTH 8<sup>TH</sup> STREET**  
**LINCOLN, NEBRASKA 68508**  
**(402) 441-7410**

**Company Representative:** Russell May  
**Telephone No.:** 816 / 436-2012  
**FAX No.:**  
**E-Mail Address:**

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THE CITY/COUNTY'S SPECIFICATIONS AND THE CONTRACTOR'S ACCEPTED PROPOSAL AND PRICING SCHEDULES, NOW ON FILE IN THE OFFICE OF THE CITY CLERK AND/OR THE COUNTY CLERK, ARE ADOPTED BY REFERENCE AND ARE AS FULLY A PART OF THIS CONTRACT FOR THE ABOVE-NAMED COMMODITY AS IF REPEATED VERBATIM HEREIN.

**AS PER CONTRACT SIGNED 4/29/03**

NO ACTION NEED BE TAKEN BY THE CONTRACTOR AT THIS TIME. ORDERS FOR MATERIAL WILL BE MADE AS NEEDED BY THE VARIOUS CITY/COUNTY DEPARTMENTS.

DEPARTMENTS REQUIRING CATALOGS AND/OR PRICING SCHEDULES SHALL NOTIFY THE CONTRACTOR DIRECTLY.

Original Contract; Contractor  
County Clerk  
County Agency

CONTRACT DOCUMENTS

**LANCASTER COUNTY**

NEBRASKA

FOR  
SPECIFICATION #02-122

**PHONE SERVICES FOR COUNTY  
CORRECTIONS AND RELATED PROGRAMS**

Contractor: **EVERCOM SYSTEMS, (Irving, TX)**

# LANCASTER COUNTY, NEBRASKA CONTRACT AGREEMENT

THIS CONTRACT, made and entered into this 5th day of December, 2002, by and between **Evercom Systems, Inc., 8201 Tristar Drive, Irving, TX 75063** hereinafter called "Contractor", and the Lancaster County, Nebraska, hereinafter called the "County".

WITNESS, that:

WHEREAS, the County has caused to be prepared and advertised in accordance with law, specifications, and other Contract Documents describing the services to be provided for **Request for Proposal # 02-122 for Phone Services at County Corrections and Related Programs**, (hereinafter referred to as the RFP), this document is included by reference as **Exhibit A**; and

WHEREAS, Contractor, in response to such advertisement, desires to and is capable of providing the described necessary services according to the terms and conditions stated in Contractor's response to the RFP, this document is included by reference as **Exhibit B**. and,

WHEREAS, the County, in the manner prescribed by law has prepared specifications (**Exhibit A**), publicly opened, read aloud, examined, and canvassed the Proposals submitted in response to such advertisement, and as a result of such canvass has determined and declared the Contractor to be the lowest responsible bidder for the said Work for the sum or sums named in the Contractor's Proposal, (**Exhibit B**) a copy thereof being attached to and made a part of this Contract;

NOW, THEREFORE, in consideration of the sums to be paid to the Contractor and the agreement herein contained, the Contractor and the County hereby agree as follows:

1. General Description. The Contractor agrees to (a) furnish all tools, equipment, supplies, superintendence, transportation, and other accessories, services, and facilities; (b) furnish all materials, supplies, and equipment specified to be incorporated into and form a permanent part of the complete work; (c) provide and perform all necessary labor in a substantial and workmanlike manner and in accordance with the provisions of the Contract Documents.
2. Term of the Agreement. Term of the Agreement shall be three (3) years as thirty-six (36) consecutive months, and shall be Jan. 1, 2003 through Dec. 31, 2005.
  - 2.1 At the County's request, with the Contractor's consent, the agreement shall be renewable for one (1) additional three (3) year period as thirty-six (36) consecutive months, and shall be Jan. 1, 2006 through Dec. 31, 2008.

3. Governing Laws. The Laws of the State of Nebraska shall govern the rights, obligations, and remedies of the Parties under this agreement.

4. Exclusive Rights. Contractor shall have the exclusive right to install and operate an inmate telecommunications system in the County's Correctional facilities, unless the Contract is terminated or the Contractor is found to be in breach of the agreement as provided herein. These exclusive rights shall apply to the following locations:

Lancaster County Corrections  
605 South 10<sup>th</sup> Street  
Lincoln, NE 68508

Lancaster Correctional Facility  
4420 N.W. 41<sup>st</sup> Street  
Lincoln, NE 68524

5. Equal Employment Opportunity. In connection with the carrying out of this project, the contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, age or marital status. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, color, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other compensation; and selection for training, including apprenticeship.

6. Compensation. The County shall be charged rates and receive commission for purchased services and equipment at the rates as set in **Exhibit B**.  
(Note: These are the Exhibit B rates.)

6.1 The County is accepting Option "C" of the Contractor's proposed commission and call rate structure (**see Attachment #1 to Exhibit B**).

6.1.1 Option "C" rates are as follows:

6.1.1.1 45% of the gross revenue or a Guaranteed Annual Minimum Commission (**GMAC**) of **\$132,000.00**.

6.1.1.2 **Local call rate of \$1.75** shall be assessed for all calls generated under the program regardless of the time of day and duration of the call.

6.1.1.3 Long distance calls shall be billed as per the rates offered on the "Charge per call rate sheet" submitted in Exhibit B.

6.1.1.4 International calling services shall be available to inmates via the Correctional Applications Manager (CAM) offer of three prepaid alternatives to collect calling.

6.2 The County reserves the right to change the compensation and rate structure to one of the other options provided in attachment #1 with 30 days written notice to the Contractor.

6.3 Unless otherwise stated, commission payments on gross revenues for the calendar month shall be paid monthly by the 30<sup>th</sup> (or last calendar day) of the following month.

6.3.1 Twenty-five dollars (\$25.00) per day will be assessed by the County for each day past the 30<sup>th</sup> or last calendar day of the month that the payment has not been received by the County.

7. Value Added Offers. The following items listed as value added services in Exhibit B are included in the Contractor's offer at no additional cost to the County:
  - 7.1 EverSentinel: A suite of diagnostic software that continuously monitors the system hardware, software and system performance from the Contractor's technical support centers.
  - 7.2 EverPortal: Contractor's customized Web Portal which will be personalized for each facility with security features to ensure authentication and secure distribution of information. The Web Portal provides the ability to share information across the network, review and audit commission statements, and access self-service reporting.
  - 7.3 Crime Tip: Provides a secure avenue for the inmate to share information with law enforcement and investigative personnel without leaving the cell.
  - 7.4 Visitation Monitoring: (*In Development*) The capability for on-site monitoring and recording of the visitation phones to provide necessary information for the County's investigative unit (when available).
8. Payment Upon Termination. Following termination of this Contract, the County shall be paid by the Contractor for commissions generated on services provided in a satisfactory manner prior to such termination, a sum based upon the actual rates stated in **Exhibit B** and accepted herein.
9. Inclusion of All Necessary Fees. The Contractor shall comply with all federal, state, and local laws together with all ordinances and regulations applicable to the services. The Contractor shall procure all licenses, permits, or other rights necessary for the fulfillment of its obligation under this agreement.
10. Outbound Calling Program. Contractor offers to the County at no cost a program to notify defendants of pending court appearances as described on page 37 of Exhibit B. It is understood by the County that we will be a Beta Test Site for this new service.
12. Conversion of System. Contractor offers and the County accepts the conversion of the traffic on the existing OMNI system at our Lancaster Correctional Facility (LCF) to the existing CAM system at no cost to the County.
13. Computer Work Stations Provided. County accepts the Contractors offer to provide up to three (3) computer workstations as needed for records retrieval or call monitoring/recording. Contractor shall also investigate the potential of upgrading one of the County's existing computers to allow for records retrieval in lieu of on the proposed new computer workstations.
14. Prepaid calling alternatives. It is understood by the County that the Contractor has available several prepaid calling alternatives. These prepaid alternative may be investigated and accepted by the County at a later date and any rates not clarified in this

section may be negotiated and possibly added to this agreement in the form of a written Amendment. These alternatives currently include, but are not limited to: CAM Debit, Prepaid Calling Cards and SmartConnect. Terms are as follows:

- 14.1 Prepaid Debit Card and CAM Debit shall be sold to the County at a 30% discount. The County shall make these services available to the inmate population. The call rates on these cards are a flat \$.50 per minute. International calls will vary depending on the country called. For the CAM Debit, there is no actual card issued, rather a PIN number which will be tied to the inmate's commissary account.
- 14.2 The County is not involved with the SmartConnect product. Contractor markets and sells this product to the called party by using the record of call attempts from the County facilities. Contractor has agreed to share the profits from any called party that accepts this service on a 50/50% basis.
15. Payment/Performance Bond. Contractor shall provide with the signed contract an acceptable **performance and payment bond in the amount of \$25,000.00**. Said bond shall be executed by the Contractor and a corporate surety company authorized to transact business in the State of Nebraska. This bond shall be in force during the entire term of the contract including any mutual agreed upon renewal periods.
16. Routine Repair Schedule. Routine maintenance shall be performed on the system between the hours of 8:00 a.m. and 4:00 p.m. Central Time. It is understood by the Contractor that the County does not want the routine maintenance schedule to interfere with the County facilities' visitation times.
17. Status of Employees. Any and all employees of the Contractor or other persons, while engaged in the performance of any work or services required by the Contractor under this agreement, shall not be considered employees of the County and all claims that may or might arise under the Worker's Compensation on behalf of said employees or other persons while so engaged, and any and all claims made by any third party as a consequence of any act or omission on the part of the work or service provided to be rendered herein, shall in no way be the obligation or responsibility of the County. For all purposes the Contractor shall be considered an independent Contractor.
18. Indemnification. Each party shall indemnify and hold harmless, the other party, its members, its officers and employees from and against all claims, damages, losses, and expenses for personal injury or damage to property, including, but not limited to attorney's fees arising out of or resulting from the indemnifying party's negligence in performance of the contract. Each party shall be responsible for the acts of their own members, officers and employees including those caused in whole or part by any negligent act or omission. This shall also mean any subcontractor, or anyone directly or indirectly employed by the Contractor.
19. Non-exclusiveness of Remedies. Any right or remedy on behalf of the County provided for in any part of these specifications, including, but not limited to, any guaranty or warranty or any remedy for Contractor's nonperformance, shall be in addition to and not a limitation of any right or remedy otherwise available by law, equity, or statute.

20. Default for Insolvency. The County may terminate this Agreement for default in the event of the occurrence of any of the following:
- 20.1 The insolvency of Contractor. Contractor shall be deemed to be insolvent if it has ceased to pay its debts in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition for bankruptcy has been filed, and whether or not insolvent within the meaning of the Federal Bankruptcy Law; the filing of a voluntary petition to have Contractor declared bankrupt; the appointment of a Receiver or Trustee for Contractor; or the execution by Contractor of a general assignment for the benefit of creditors.
21. Default for Nonperformance. County may, by written Notice of Default to Contractor, terminate the whole or any part of this Agreement in any of the following circumstances:
- 21.1 If Contractor fails to perform the services within the time specified in the contract or any authorized extension thereof; or if Contractor fails to perform any of the provisions of this Agreement, or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of fifteen (15) days (or such longer period as County may authorize in writing) after receipt of notice from the County specifying such failure.
22. Notices. All notices or demands required or permitted to be given or made hereunder shall be in writing and shall be deemed to have been given if made by hand delivery with signed receipt, or when mailed by first class registered or certified mail, postage prepaid, addressed to the County and Contractor at their respective addresses designated below, or at such other address as the County or Contractor, as the case may be, shall have furnished in writing to the other.
23. Financial Status Warranties. County acknowledges that the Equipment is owned by Evercom. However, Evercom specifically acknowledges that County will sustain damages if Evercom is unable to perform its obligations under this contract due to additional work required to manage the inmate population if this phone privilege is not available and that it is impractical and extremely difficult to ascertain the amount of these damages.
- 23.1 Evercom acknowledges that use of all Equipment and software installed in County facilities for **six (6) months** is a reasonable amount for the damages incurred due to the legal requirements on County related to solicitation of vendors.
- 23.2 If, for any reason, Evercom becomes unable to perform its obligations under this contract and goes into receivership or into bankruptcy, either voluntarily or involuntarily, while this contract is in effect, all equipment and software installed which are necessary to operate the phone system in County facilities by Evercom remains subject to a six (6) month lease for possession and use of the Equipment and Software at no cost as liquidated damages for default based on Evercom's representations and warranties related to its financial status.

23.3 These damages are to avoid liability for County and allow County time to obtain other equipment and services in compliance with the County Purchasing Act.

24. Insurance. The Contractor shall maintain during the life of this contract the types and amounts of insurance as specified in the attached "Insurance Requirements for County Contracts (included in **Exhibit A**)". The County shall be named as additional insured with regard to the performance of the contract services.

These Contract Agreements, together with the other Contract Documents herein above mentioned, form this Contract, and the are as fully a part of the Contract as if hereto attached or herein repeated.

The Contractor and the County hereby agree that all the terms and conditions of this Contract shall by these presents be binding upon themselves, and their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the contractor and the County do hereby execute this contract.

**EXECUTION BY LANCASTER COUNTY, NEBRASKA**

CONTRACT APPROVED AS TO FORM:

COUNTY OF LANCASTER, NEBRASKA

David W. Hanson  
for Lancaster County Attorney

Deanne Ace  
Chairperson, Board of Commissioners 4/29/2003

**EXECUTION BY CONTRACTOR**

IF A CORPORATION:

Evercom Systems, Inc.

Name of Corporation

ATTEST:

8201 Tristar Drive, Irving, Texas 75063

Secretary

(SEAL)

Address

By:

John J. Koehn  
Duly Authorized Official

Legal Title of Official